

A low-angle photograph of the U.S. Securities and Exchange Commission (SEC) building, a modern skyscraper with a glass facade. The building's name is visible on the stone facade. In the foreground, there are flagpoles with flags. The sky is overcast.

SEC Enhances the regulation of Private Fund Advisers



OUR FEATURED PANELISTS



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EFSI

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ABOUT



AKRAM & ASSOCIATES IS A FULL-SERVICE ACCOUNTING FIRM PROVIDING ASSURANCE, ADVISORY, AND TAX SERVICES FOR THE FINANCIALLY SAVVY, ESPECIALLY HEDGE FUNDS & CRYPTOCURRENCY FUNDS.



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INTRODUCTION

In August 2023, the U.S. Securities and Exchange Commission (SEC) unveiled a set of groundbreaking regulatory reforms impacting private fund managers. These new SEC rules usher in a transformative era for private fund operations, demanding careful consideration and strategic adjustments from all fund managers, irrespective of their registration status. This discussion delves into the core implications of the regulations and offers vital recommendations for private fund managers in navigating these changes effectively.

ESSENTIAL RULES FOR FUND MANAGERS:

Introducing two essential rules for fund managers:

- **The Preferential Treatment Rule promotes fairness and equal treatment for all investors.**
- **Restricted Activities Rule ensures the protection of investor interests by restricting certain harmful or unethical practices.**
- **These rules apply to all managers, regardless of their registration status.**

PREFERENTIAL TREATMENT RULE OVERVIEW

- The Preferential Treatment Rule addresses four types of preferential treatment by Managers to Investors in Funds they manage.
- Disclosure of one type ("**Redemption Rights May Only be Uniformly Offered to All Investors**") doesn't make it permissible.
- Certain disclosures make the other three types permissible.

PREFERENTIAL TREATMENT WITHOUT DISCLOSURE EXCEPTIONS

- Redemption Rights Uniformity.
- Managers can't grant preferential redemption rights that adversely affect other Investors unless offered to all or mandated by law.
- Redemption right" includes common terms like lock-ups and notice periods.
(**Grandfathered Rule**)

PREFERENTIAL TREATMENT WITH DISCLOSURE EXCEPTIONS

Portfolio Information

If providing certain portfolio info negatively affects others, it must be shared with all investors simultaneously. (Grandfathered Rule)

Notice to Prospective Investors

Managers must disclose current preferential treatment regarding "material economic terms. (Non-Grandfathered Rule)

Annual Notice to Current Investors

- Managers must describe preferential treatment specifics to current investors.
- Must update annually. (Non-Grandfathered Rule)



POLLING QUESTION

UNDER WHAT CONDITION CAN MANAGERS GRANT PREFERENTIAL REDEMPTION RIGHTS WITHOUT ADVERSELY AFFECTING OTHER INVESTORS?

- a) Only if mandated by law.**
- b) Only if disclosed to all investors simultaneously.**
- c) Managers cannot grant preferential redemption rights.**

RESTRICTED ACTIVITIES RULE OVERVIEW

- The restricted activities rule covers five specific activities of managers.
- Three activities have disclosure-based exceptions.
- Two activities require investor consent.

ACTIVITIES WITH DISCLOSURE-BASED EXCEPTIONS

- Reduction of manager "Clawbacks" for taxes.
- Disclose pre-tax and post-tax clawback amounts within 45 days.
- Charging the fund for regulatory, compliance, and examination-related expenses.
- Disclose fees and expenses associated with regulatory activities and examinations within 45 days.
- Non-pro rata allocation of portfolio investment-related fees and expenses.
- Must disclose an explanation for non-pro rata allocation.

ACTIVITIES REQUIRING INVESTOR CONSENT

- Direct borrowing by the manager from the fund.
- Requires both disclosure and investor consent. (**Grandfathered Rule**)
- Charging the fund for Investigation-related expenses.
- Requires both disclosure and investor consent.
- Prohibited if investigations result in sanctions.

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THRESHOLD FOR INVESTOR CONSENT

Investor consent refers to a majority-in-interest of unrelated Investors.

This applies to the activities requiring investor consent.



POLLING QUESTION

WHICH ACTIVITY COVERED BY THE RESTRICTED ACTIVITIES RULE REQUIRES BOTH DISCLOSURE AND INVESTOR CONSENT?

- a) Reduction of manager "clawbacks" for taxes.**
- b) Charging the fund for investigation-related expenses.**
- c) Non-pro rata allocation of portfolio investment-related fees and expenses.**

COMPLIANCE NOTES

- **Managers with at least \$1.5 billion in Fund assets have an 18-month compliance date for certain Rules, and all other Rules have a 12-month compliance date.**
- **Managers with less than \$1.5 billion in Fund assets have a 18-month compliance date.**

RECORD KEEPING NOTES

Quarterly Statements:

Share fees, expenses, and performance info with Investors.

Annual Audit:

Conduct annual audits, and provide financial statements.

Fairness Opinion:

Disclose opinions and business relationships for secondary transactions.

Annual Policy Reviews:

Document policy reviews within 60 days.

GRANDFATHERED RULE NOTES:

- **Certain rules, called grandfathered rules, do not apply to funds that meet specific criteria.**
- **Criteria include fund commencement of operations before the compliance date, pre-compliance date governing agreements, and potential amendment requirements.**
- **The grandfathered rules include restrictions on redemption rights, portfolio information distribution, direct borrowing by the manager from the fund, and charging investigation-related expenses to the fund.**



POLLING QUESTION

HOW LONG IS THE COMPLIANCE DATE FOR MANAGERS WITH AT LEAST \$1.5 BILLION IN FUND ASSETS FOR CERTAIN RULES?

- a) 12 months**
- b) 18 months**
- c) 6 months**



THANKS FOR LISTENING



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